IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 4391 of 2003()

CC.637/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER: ACCUSED

ABDUL RAHIMAN.A., AGED 54 YEARS,
S/O. M.ALIYARU KUNJU, NJARAKKALAZHIKON,
KANJAVELI P.O., KOLLAM.

BY ADV. SRI.BIMAL K.NATH
SRI.S.R.MANOJ

RESPONDENTS:

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1. SUSHEELA, AGED 41 YEARS,
KIZHAKATHIL VEEDU, NJARAKKALAZHIKOM,
KANJIRAVELI P.O., KOLLAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

R1 BY ADV. SRI.C.R.SIVAKUMAR
R2 PUBLIC PROSECUTOR SRI GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL M.C. NO. 4391 of 2003

Dated 23rd day of November, 2006

ORDER

The petitioner who is the accused in C.C.No.637/2003 in the court of the Judicial Magistrate of First Class-I, Kollam with respect to the offences under sections 509, 294(a) and 448 IPC, has sought for setting aside the proceedings on the following grounds. It is pointed out that the same complainant had filed a complaint with respect to the same incident earlier and the same was referred to the police for investigation under section 156(3) Cr.P.C.and the police after elaborate investigation submitted a refer report finding that the complainant is a person afflicted with mental illness and that she is in the habit of picking up quarrels with neighbours and others and on investigation it is found that the incident is false. What provoked her is the fact that the petitioner who is an Engineer had supervised the construction of a compound wall of a neighbour of the complainant with whom she was having enmity. It is pointed out that the petitioner is an Engineer by profession and is employed in P.W.D. and he is a respectable person of the locality. It is contended that the court has

issued summons to the petitioner in a rather routine and casual manner which is contrary to the decision of the Supreme Court in **M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate** (A.I.R. 1998 S.C. 128) wherein the court has observed that summoning the accused in a criminal case is a serious matter and that the criminal law cannot be set in motion as a matter of course and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case. The Court has also observed that the Magistrate should not be a silent spectator at the time of recording preliminary evidence before summoning the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit matters to find out the truthfulness of the allegations or otherwise, and then examine if the offence is prima facie made out at all. In **Kader v. State of Kerala** (1999(3) KLT 55), this court has cautioned that the Magistrate has a duty also to protect the interest of the absent accused in such matters.

2. I find that the allegation of the complainant is that the

petitioner abused her and lifted up his dhoti and displayed certain actions that has resulted in much harassment to her. It is also submitted that the complainant had filed a petition before the Vanitha Commission as well and the same was dismissed.

3. Counsel for the first respondent/complainant has contended that the petitioner is a politician of the locality and that he has managed the police to see that the refer report is filed.

4. In the circumstances and in view of the fact that the police has filed a refer report in the matter, the Magistrate is herewith directed to consider afresh the matter and summon the witnesses mentioned in the complaint as well as consider the refer report and thereafter only issue summons to the accused.

5. In the result, the proceedings initiated is herewith quashed and the matter is remitted back for fresh consideration. The complainant may appear before the court below on 15-12-2006.

The Crl.M.C.is disposed of accordingly.

Kvm/- K.R.UDAYABHANU,JUDGE.

kvm/-